IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4586 OF 1995

Arun Vaijanath Ughad,]
Aged about 50 years, Occ: Agriculturist]
residing at and post Bhatambare,] .. Petitioner
Tal. Barshi, Dist. Solapur.](Ori.Resp.No.4)

Versus

1. The State of Maharashtra]
(Notice to be served on Addl.]
Government Pleader, High Court,]
Appellate Side, Bombay.)]

2. The Additional Commissioner,]
Pune Division, Pune.]

3. The Sub-Divisional Officer,]
Solapur, District Solapur.]

4. The Tahsildar, Barshi,]
District Solapur.]

5. The Hon'ble Minister,]
Food & Civil Supplies Department,]
Mantralaya, Bombay 400 032.]

6. Shri Madhukar Manohar Patil,]
Age adult, Occ: Agriculture.]

7. Shri Popat Kashinath Khune,]
Age adult, Occ: Agriculture.]

8. Shri Tukaram Digambar Ahune,]
Age adult, Occ: Agriculture.]

9. Shri Anna Mahadeo Shiral,]
Age adult, Occ: Agriculture.]

10. Shri Rajaram Baburao Mane,]
Age adult, Occ: Agriculture,] .. Respondents
All Nos.6 to 10 being the members of](Nos.6 to 10
the Action Committee of Village] original
Bhatambare, Tal.Barshi, Dist.Solapur] complainants)

Mr. K.K. Jadhav for the petitioner.

Mr. Vinay Sonpal, AGP, for the respondents No.1 to 5.

CORAM: R.M. LODHA &
A.S. BAGGA, JJ.

DATED: 13TH JUNE, 2006

ORAL JUDGMENT : [Per R.M. Lodha, J.]

. The petitioner seeks exception to the order dated 25th August, 1995 passed by the Minister for Food, Civil Supplies and Consumers Protection. By the said order, the concerned Minister, in exercise of his revisional powers under Section 24 of the Maharashtra Scheduled Commodities (Regulation of Distribution) Order 1975 set aside the order dated 22nd July, 1993 passed by the Additional Commissioner, Pune Division, Pune. The concerned Minister ordered that the licence of the present petitioner for fair price shop be revoked and the security deposited made by him be forfeited.

2. The Government approved fair price shop at village Bhatambare, Taluka Barshi was sanctioned in favour of the petitioner way back in the year 1980-81. In the month of February 1992, a complaint was lodged with the Tahsildar, Barshi about irregularities being committed by the petitioner in the said fair price shop. Enquiry was conducted and the petitioner was served with

show cause notice on 1st July, 1992. The following irregularities were noticed in the show cause notice:

> "(1) Name board of the foodgrains shop and board showing rates have not been displayed conspicuously in the shop.
>
> (2) On checking Receipt Book, it is seen that name of the shop has been mentioned but thumb impressions have not been obtained on receipts.
>
> (3) On checking the Stock Register and Sale Register, it is seen that a common register is used for two villages, viz. villages Pimpri (Aar) and Bhatambare.
>
> (4) In the months of February, March and April sugar was distributed at the end of the month. Similarly, in the month of February 1992, wheat and rice were not distributed.
>
> (5) Foodgrains shop is not being conducted personally and instead it is being conducted through Shop Manager.
>
> (6) The shop is not being conducted at the place mentioned in the Authority Letter and it is seen that location of the shop has been unauthorisedly changed without obtaining permission from the office.
>
> (7) Documents to show that weights and scales in the foodgrains shop were certified were not made available for inspection.
>
> (8) Authority Letter in respect of the Fair Price Shop was not made available for inspection.
>
> (9) Holders of Card Nos. 17, 61, 639, 650 and 640 attached to the foodgrains shop were not supplied sugar in the month of February."

3. The petitioner responded to the Notice and submitted his clarification. The petitioner stated in

the reply that the name board of the shop has been displayed now on the front side of the shop; that readymade Receipt books were purchased and the rubber stamp of the name of the shop has been stamped on the receipts; that separate Stock and Sales Registers have been maintained for villages Pimpri and Bhatambare; that there was a delay in distribution of sugar due to his bad mental condition; that he was personally running the fair price shop; that the location of the shop was changed without getting approval; that the certificate for passing weights and measures shall be submitted after getting the same from the Weights & Measures office; that at the time of inspection, the authority letter was sent to Tahsil office for renewal and, therefore, could not be made available; that since holders of cards No.17, 61, 639 and 640 had not come to the shop for purchase of goods, their entries have not been taken. Besides that, in his reply the petitioner also stated that there were two political parties in Bhatambare village and the complaint has been lodged at the instance of the members of the rival party.

4. The Sub-Divisional Officer, Solapur Division, Solapur, after consideration of the reply of the petitioner, by his order dated 27th July, 1992, ordered revocation of authority letter and forfeiture of

security deposit.

5. Aggrieved by the order of the Sub-Divisional Officer, the petitioner preferred Revision Application under Section 24 of the Maharashtra Scheduled Commodities (Regulation of Distribution) Order 1975. The said Revision Application was heard by the Additional Commissioner, Pune Division and by his order dated 22nd July 1993, the Additional Commissioner allowed the Revision Application and set aside the order passed by the Sub Divisional Officer, Solapur. He ordered that the petitioner's authority to run the fair price shop be continued, but half of his security deposit be forfeited to the Government.

6. The respondents No.6 to 10 herein carried the matter to the Minister, Food, Civil Supplies & Consumers Protection by filing Revision under Section 24 of the Maharashtra Scheduled Commodities (Regulation of Distribution) Order 1975. The concerned Minister allowed the Revision Application filed by respondents No.6 to 10 herein and set aside the order of the Additional Commissioner, Pune Division, Pune and even held that the order passed by Sub-Divisional Officer was mild in nature and ordered that licence of the petitioner for fair price shop be revoked and his

security deposit be forfeited.

7. The order dated 25th August, 1995 passed by the Minister Food, Civil Supplies & Consumer Protection cannot be sustained for more than one reason. First, the impugned order suffers from non consideration of the matter in right perspective. The Additional Commissioner considered the irregularities alleged to have been committed by the petitioner in running the fair price shop in the light of the response of the petitioner and with regard to each charge, specifically held as to whether the alleged irregularity was trivial or of medium nature. Charges No.1, 2, 3, 6 and 7 were found of trivial nature while charges No.4 and 5 were found of medium nature. Charges No.8 and 9 were not held to be proved. The specific consideration of each charge done by the Additional Commissioner was not adverted to by the Minister and in a very slipshod manner it is recorded in the impugned order that charges against the petitioner are serious in nature. The consideration of the matter by the Minister in Revisional jurisdiction against the order passed by the Additional Commissioner also in Revisional jurisdiction is far from satisfactory. Second, the petitioner has been running the fair price shop since the year 1980-81. Until the year 1992, there was no allegation against the

petitioner in running the fair price shop. The allegations that were made in the complaint in the year 1992 were largely trivial; some of these were even admitted by the petitioner. The Additional Commissioner noticed that serious flaws like disposing of foodgrains in wrong manner or misappropriation were not alleged against the petitioner. This aspect has altogether been overlooked by the concerned Minister.

8. It is pertinent to notice that the impugned order dated 25th August, 1995 could never come in operation as by the interim order passed by this Court on 25th September, 1995 the operation of the impugned order was stayed. The said interim order is operative for more than ten years. At this distance of time, we find no justification to uproot the petitioner. During the period from 1995 until date, there are no irregularities imputed against the petitioner.

9. For all these reasons, we are satisfied that the impugned order dated 25th August, 1995 deserves to be set aside and we order accordingly. Rule is made absolute with no order as to costs.

Sd/-
[R.M. LODHA, J.]

Sd/-
[A.S. BAGGA, J.]